Before the
Federal Communications Commission
Washington, D.C.20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	WC Docket No. 03-109
Lifeline and Link-Up		

REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO AUGUST 3, 2011 FURTHER INQUIRY

Dated: September 6, 2011

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SUMMARY OF COMMENTS

The Nebraska Rural Independent Companies ("Nebraska Companies") hereby provide these reply comments with respect to the record developed on the "ABC Plan" and the modified proposal put forward by the Joint Rural Associations which the Commission refers to as the "RLEC Plan" (collectively the "Industry Plans"). The RLEC Plan proponents' intent may have been laudable. Yet, the provisions they have proposed do not rationally support the conclusion that the RLEC Plan will provide for, maintain, and encourage the continuation of universal service in sparsely populated, high cost rural areas served by the Nebraska Companies and other rate-of-return ("RoR") companies. The goals of universal service must be achieved and are far too important to be left to a less-than-fully explained and understood RLEC Plan.

Significant concerns exist that the RLEC Plan will not provide incentives for controlling capital and operating costs and that the RLEC Plan may otherwise penalize RoR companies that will need to upgrade their networks in order to deliver broadband to their customers. This concern can be addressed through use of the Nebraska Companies' previously-provided regression analysis to determine reasonable versus extraordinary levels of investment. Based upon this determination, recovery from the federal universal service fund ("USF") should be allowed at the current authorized return for reasonable investment and at a lower return for extraordinary investments. Consistent with the Commission's efficiency goals, operating costs can be controlled under the RLEC Plan by: (a) expanding the existing cap to include all expense categories; (b) setting the cap using a regression analysis at a level higher than the industry mean with a streamlined waiver process available to those companies with legitimate expenses that exceed the limit; and (c) if the Commission chooses to continue to limit only corporate operating expenses, applying the cap on a holding company basis, not on a study area basis. The Nebraska

Companies also propose that the Commission address the "donut and hole" issue that the RLEC Plan leaves for another day. While the Rural Associations are correct that this issue is difficult, it still must be addressed such as has been done by the Nebraska Universal Service Fund ("NUSF"). The experience in Nebraska is that the NUSF directs support only to areas that are determined to be high cost areas based upon density and cost factors.

To address the RLEC Plan's "winners" and "losers", the Nebraska Companies suggest that the current concentration of High Cost Loop Support ("HCLS") among a subset of carriers must be addressed. Creating capital and operating controls will assist in this effort, but the Commission must also address the index that controls the size of the fund. A broadband fund cap should be indexed based on the consumer price index, and if lines are used in the formula both access lines and broadband-capable lines should be included.

In lieu of the RLEC Plan's treatment of Safety Net Additive ("SNA"), the Nebraska Companies suggest that an existing USF recipient should only continue to receive SNA if it can demonstrate that its aggregate amount of Telecommunications Plant in Service had increased by 14% annually at the time it initially qualified. SNA should not be available in the future.

Local Switching Support ("LSS") should be directed to areas of higher than average cost rather than disbursed based on a study area's size. Thus, LSS should be merged into HCLS, which has cost eligibility thresholds, and reflect the fact that the driver of the RoR carrier's costs is overall loop and switching costs rather than just switching costs. To address concerns that interstate switching rates would increase if LSS were eliminated, the Nebraska Companies propose that interstate access rates be capped at existing levels with unrecovered switched revenue requirements due to capped interstate switched rates to be recovered through the Recovery Mechanism ("RM").

In contrast to the lack of implementation specifics in the RLEC Plan, the Commission should require all carriers receiving CAF to deploy broadband over specified timeframes and to a specified percentage of locations. As the State Members of the Joint Board have advocated, the deployment targets should take into account available funding, accurate data on existing coverage, and the availability of supplemental state funding with deployment percentages based on the attributes of the area served.

In all events, the Nebraska Companies suggest that the RLEC Plan's federal USF "budget" and "take rates" to determine USF disbursements be examined to ensure that under-funding does not occur for high-cost RoR companies. Absent such close scrutiny, it is uncertain how a factual finding regarding "sufficient" and "predictable" federal USF/CAF can be made. From a practical perspective, the RoR companies that have already deployed a broadband network would have higher "take rates" than those RoR companies in need of deploying broadband network capability. Consequently, the RLEC Plan would allocate a higher percentage of loop costs to the interstate jurisdiction for the lower cost companies with higher take rates. Based on the Commission's investigation of the financial impacts of the RLEC Plan in a capped USF context, the Commission needs to determine that the anticipated federal USF disbursement levels for each of the various "cost per loop" groups are at sufficient and predictable levels. The Nebraska Companies recommend that the allocation between jurisdictions not be changed except after compliance with the separations Joint Board process to adjust for the RM.

The "wholesale broadband benchmark" proposal within the RLEC Plan should be replaced with a *retail* broadband benchmark based on the price of comparable service in urban areas. In addition to other supported costs, supported broadband costs should include the middle mile and Internet backbone costs associated with provision of broadband service. The Nebraska

Companies also request that the Commission adopt a more reasonable retail voice benchmark that does not harm early adopter states such as Nebraska.

With respect to the Industry Plans, the RM has not been demonstrated to meet the "sufficiency" requirement (in particular, that no more than "sufficient" support be provided) as required by Act. In addition, the RLEC Plan's RoR RM does not consider the complexities of a pooling environment. A company's "settled" intercarrier compensation rate, which includes both the company's contribution or receipt from the pool plus the company's billed interstate access rate, is a more appropriate measure of the company's economic situation than simply a billed rate. The need for a more refined RM calculation was made more apparent with NECA's July 2011 NECA tariff revisions, in which tandem switched transport rates in Band 2 increased nearly 70%, and all end office switching rates increased by 22%. Due to these dramatic interstate rate increases, intrastate rates are now lower than interstate rates for some RoR companies, and thus, some high-cost rural companies will not receive RM in the first two years of the RLEC Plan and others will experience reduced RM. Moreover, the Industry Plans would provide excessive federal USF to some price cap carriers under the ABC Plan by failing to offset decreases in switched access revenues with increases in special access revenues.

The Nebraska Companies believe that their comments, together with comments provided by other commenters, demonstrate that the Industry Plan's proposed preemption of state commission authority is without basis. The Commission should work in partnership with states to address intercarrier compensation reform and avoid the quagmire of legal challenges that preemption will precipitate. As an example, the Nebraska Public Service Commission's concept of a "per-line" matching proposal would allow the Commission to condition matching funds on state compliance with access reductions and local rate rebalancing to the national benchmark with federal support reduced if a state fails to comply with the new requirements. Commission efforts should also ensure the continuation of sufficient intrastate universal service fund contribution bases.

While the Nebraska Companies may disagree with certain parties with regard to the ultimate action on intercarrier compensation and universal service policies, there appears to be considerable consensus across industry segments that the ABC Plan's proposals regarding Internet Protocol ("IP") interconnection (both IP-Time Division Multiplex ("TDM") and IP-IP) are wholly improper. As stated in Nebraska Companies comments, if the interconnection compensation and technical requirements and obligations regarding IP-IP and IP-TDM are not fully developed in Commission-prescribed rules, whatever reforms are ordered by the Commission are likely to be subject to manipulation and control by the large price cap carriers.

Finally, the record confirms that the ABC Plan violates Section 254 by relegating the highest cost customers to substandard (and possibly no) broadband and voice services. Claims that satellite service will meet *both* the voice and broadband needs of rural areas are not equivalent to demonstrated facts. Moreover, there has been no demonstration that satellite providers will be able to comply with Congressionally-mandated Eligible Telecommunications Carrier requirements. Further, the record fails to establish the viability of the "Alternative Technology Cost Threshold" or that high-cost USF support is needed by satellite providers to serve remote, high-cost areas. If the Commission determines that any serious consideration should be accorded to satellite technology to serve the highest cost areas of the country, a full and complete record must be developed to demonstrate the capability of satellite providers to provide universal service in sparsely populated rural areas.

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REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO AUGUST 3, 2011 FURTHER INQUIRY

The Nebraska Rural Independent Companies ("Nebraska Companies"),[1] which provide telecommunications and broadband access services to some of the most-rural, sparsely populated parts of America, appreciate the opportunity to submit these Reply Comments in response to the Further Inquiry issued by the Federal Communications Commission (the "Commission").[2] For

[1] The Companies submitting these Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

[2] *See*, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-

the reasons stated herein, the Nebraska Companies respectfully submit that the Commission should not adopt either the July 29, 2011submission entitled "America's Broadband Connectivity Plan" (the "ABC Plan") as filed by representatives of six (6) interstate price cap companies – AT&T, CenturyLink, FairPoint Communications, Frontier, Verizon and Windstream (the "ABC Plan Filing Companies"), or a proposal put forward by the Joint Rural Associations which the Commission refers to as the "RLEC Plan"[3] (the ABC Plan and the RLEC Plan will be collectively referred to in these Reply Comments as the "Industry Plans").[4] Rejection of the Industry Plans is fully supported by the record, by the Nebraska Companies comments,[5] and these reply comments.[6] Alternatively, the Commission should issue an order reforming existing

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92, 96-45, GN Docket No. 09-51, DA 11-1348, released August 3, 2011 (the "*Further Inquiry*"). The *Further Inquiry* also relates to the Commission's action earlier this year addressing universal service and intercarrier compensation ("ICC"). *See generally In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 10-90, FCC 11-13, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, released February 9, 2011 ("*CAF NPRM*")

[3] The RLEC Plan was defined by the rural associations in two principal documents, the initial association plan (*see*, Comments of the National Exchange Carrier Association, Inc. *et al.*, WC Docket No. 10-90 *et al*., filed April 18, 2011 (the "*April RLEC Plan*") and the modifications reflected in a letter filed in the above-captioned proceeding by US Telecom and various parties (the "*US Telecom Letter*") (collectively the "RLEC Plan").

[4] *See, Further Inquiry* at 1, fn. 3. The Nebraska Companies will use the same nomenclature that they used in their comments when referencing the various plans. In addition, once the full name of a set of comments is provided, the name of the commenting party followed by the "Comments" will be used.

[5] Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90 *et al.*, filed August 24, 2011 (the "Nebraska Companies Comments").

[6] The positions of the Nebraska Companies regarding the State Members of the Federal-State Universal Service Joint Board Plan (the "State Members Plan") were set forth in the Reply Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90 *et al.*, filed May 23, 2011.

federal USF and ICC for rate-of-return ("RoR") companies consistent with the recommendations that follow.

I. AS CURRENTLY PROPOSED, THE RLEC PLAN FAILS TO MEET THE STATUTORY OBJECTIVES OF UNIVERSAL SERVICE AS WELL AS THE OBJECTIVES OF THE COMMISSION IN THIS PROCEEDING.

It is axiomatic that the Commission must achieve the Congressionally-mandated standard of "sufficient" and "predictable" federal universal service funding with regard to any order issued in this proceeding.[7] At the same time, the Nebraska Companies anticipate that the Commission will also expect that the terms of any such order meet the stated objectives and proposals that were included in the *CAF NPRM*.[8] While the Nebraska Companies have amply demonstrated in comments that aspects of both the RLEC Plan and the ABC Plan cannot possibly meet the Section 254(b) standards and the Commission-stated objectives, it is now clear in light of the Rural Associations' comments in support of the RLEC Plan that additional elements of the RLEC Plan are equally suspect. The Rural Associations claim that the RLEC Plan: (1) adheres to the universal service principles in the 47 U.S.C. § 254(b), if implemented as proposed;[9] (2) ensures that consumers and businesses in rural areas served by RoR companies will continue to have access to high-quality voice and broadband services at reasonable rates;[10]

[7] 47 U.S.C. § 254 (b)(5).

[8] The Commission has identified several structural issues within the *CAF NPRM* that the Commission contends lead to inefficiencies, lack of accountability and inappropriate targeting of limited funds. *See, CAF NPRM* at paras. 7 and 21.

[9] *See*, Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, WC Docket No. 10-90 *et al*., filed August 24, 2011 (the "Rural Associations Comments") at i, 3, 4, and 52.

[10] *See*, *id*. at 10.

and (3) advances the Commission's objectives for reform, including the objectives for reforming RoR regulation.[11]

The Nebraska Companies respectfully submit that for the reasons set forth below, such conclusions cannot rationally be made. The Nebraska Companies are not alone in this observation. Numerous commenters pointed out that the Industry Plans do not comply with the requirements of the statute, meet the Commission's stated objectives, or allocate wisely limited federal Universal Service Fund ("USF") resources.[12] As to the latter point, the RLEC Plan as currently drafted creates "winners" and "losers" among rural carriers.[13] That result is simply inappropriate particularly in the context of a capped "budget" suggested in the RLEC Plan.

The intent of the Rural Associations to fashion a USF plan that meets the objectives of Section 254 of the Act and those established by the Commission in the *CAF NPRM* may be laudable. However, the resulting RLEC Plan simply does not meet these objectives in a manner that provides for, maintains, and encourages the continuation of universal service in the rural areas served by the Nebraska Companies and other high-cost rural RoR companies. The goals and objectives of universal service must be achieved and are far too important to be left to less than fully explained and understood proposals included in the RLEC Plan and the ramifications

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[11] *See*, *id*. at i, 3, 4, and 52.

[12] *See*, Comments of the Rural Broadband Alliance, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("RBA Comments") at 8, 12; Comments of the Nebraska Public Service Commission, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("Nebraska Commission Comments") at 3, 19 and 21; Comments of the Texas Statewide Telephone Cooperative, Inc., WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("TSTCI Comments") at 4; Comments of the Rural Independent Competitive Alliance, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 19; Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("Pennsylvania Commission Comments") at 33-34; Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("NASUCA Comments") at 8-9, 12, and 50-51.

[13] *See,* Nebraska Companies Comments at iv, 77 and 83-89.

arising therefrom. Accordingly, the Nebraska Companies respectfully request that the Commission reject the RLEC Plan, or minimally, revise the RLEC Plan as described below.

A. The Proposal of the RLEC Plan to Limit Investment will not Provide Incentives for Controlling Capital Costs and may Penalize Companies that Need Upgrades.

The Nebraska Companies respectfully submit that the RLEC Plan does not properly address the Commission's stated concern that RoR universal service mechanisms often do not provide incentives for controlling capital costs[14] or the concerns regarding the pace of RoR companies' current investments, especially given the demographics of the customer base and rate of consumer adoption.[15] Similarly, the RLEC Plan does not properly address the limits that can be imposed on reimbursable capital costs for LSS.[16] In response to these deficiencies, the Nebraska Companies propose the following two modifications to the RLEC Plan.

1. The Proposal of the RLEC Plan for Rate of Investment should be Modified to use Actual Capital Costs that would be Incurred to Deploy Broadband.

First, the RLEC Plan does not properly address future investment. In response to the Commission's concern, the Rural Associations contend that their proposal "assures that limited high cost funds available for incremental investment will go where they are most needed and will be distributed fairly."[17] The Rural Associations also contend that, because capital expenditures

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[14] *See, CAF NPRM* at para. 162; *see also, Further Inquiry* at 7.

[15] *See, CAF NPRM* at 171.

[16] *See, Further Inquiry* at 7.

[17] Rural Associations Comments at 23. The RLEC Plan proposes a three-step process to calculate the rate of future allowable investment. Specifically, the Rural Associations' proposal can be summarized in three steps. First, the Total Investment Amount is determined. Several methods of measuring investment need are discussed, and the paper selects the method of using booked investment. *See, April RLEC Plan,* Appendix A at 5. Second, the portion of a carrier's loop plant that has reached the end of its useful life, and thus should be eligible for replacement, is calculated based on a ratio of accumulated depreciation to gross plant from a company's financial records.

would be tied to a percentage of a company's accumulated depreciation balance (*i.e.*, a universal service RoR investment recovery cap (the "RoR Cap")), the RLEC Plan reflects the particular circumstances and unique costs of operating in each specific rural area.[18]

While the Nebraska Companies believe that, even if the overall structure of the proposed RoR Cap is reasonable, reliance on current booked costs in the RoR Cap is misplaced. Basing a future capital expenditure limit on a company's booked costs only perpetuates concerns that may exist with respect to the company's current cost structure. Moreover, under the RLEC Plan, any company that spent excessively on its current plant would be allowed to again invest excessively in the future. Conversely, if a company's now-current investment is insufficient and plant upgrades are needed to provide broadband, the RLEC Plan would not allow that company sufficient opportunity to make future investments. In other words, the RLEC Plan creates "winners" and "losers." If a company's past investment is excessive, then the RLEC Plan places an undue burden on scarce USF resources, whereas, if a company's investment is insufficient, then the RLEC Plan does not allow for a reasonable replacement of aging plant.

The Nebraska Companies respectfully submit that this negative aspect of the RLEC Plan can be addressed by the Commission establishing of a limit for reasonable future capital investments through the use of a regression analysis. The limit could be statistically established based on a study area's operating characteristics, such as was done in the Nebraska Companies' Capital Expenditure Study.[19] The dependent variable in the analysis could be the estimated

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This ratio is multiplied by the Total Investment Amount to determine the Future Allowable Investment. *See, id.*, Appendix A at 6. Finally, the Future Allowable Investment is spread over a five-year period. *See, id.*

[18] *See*, RLEC Plan at 8.

[19] *See*, *Ex Parte* Letter of the Nebraska Companies, WC Docket No. 10-90 *et al.*, filed January 7, 2011, and attachment entitled "Nebraska Rural Independent Companies' Capital Expenditure Study: Predicting the Cost of Fiber to the Premise" (the "*January 7th Nebraska Companies Ex*

capital costs of broadband construction projects,[20] and the independent variables could be geographic and demographic variables, such as location density, cost of living and topography measures. The regression analysis would determine an equation that represents the mean of the sample data, and then a cap could be statistically established at a level higher than the mean value.

Under this process, recovery of future capital investments through USF support would only be allowed if the unretired capital investment for the service area is less than the cap. However, since no regression analysis can anticipate every potential operational characteristic nor those events out of the control of the reporting RoR company (such as the damage arising from Hurricane Irene in the eastern states), a streamlined waiver process should be available to those companies with legitimate investments that exceed the cap.

The Nebraska Companies respectfully submit that this process addresses the "winners" and "losers" under the RLEC Plan by providing a predictable and sufficient path for moving forward that does not harm or reward any given company based on past investment decisions and on the company's current investment level. At the same time, the use of this regression formula provides the Commission with assurance that the company's future investment will be reasonable, given the company's service area operating characteristics. With this change, the remaining provision of the pace of investment portion of the RoR capital expenditure proposal in the RLEC Plan could be applied to regulate the pace of investment.

Parte"). The Nebraska Companies also note that the RLEC Plan recognized regression studies as one of several valid methods of determining costs. S*ee, April RLEC Plan,* Appendix A at 5.

[20] In this context, costs of new construction using modern technology would not be produced by a computer model, but rather estimated based on actual engineering designs.

2. The RLEC Plan should be Augmented by a Method to Limit Recovery of "Extraordinary" Existing Investments.

Second, the RLEC Plan does not specifically address recovery of existing investment, *i.e.*, booked investment as of the date that the Commission implements any reform proposal for RoR companies. The Rural Associations contend that the cap on future investment "assures that limited high cost funds available for incremental investment will go where they are most needed and will be distributed fairly."[21] The Nebraska Companies disagree. A plan with no limit on recovery for existing investment beyond that required to meet a Commission-approved definition of universal service (which could include the Commission-prescribed level of broadband) could potentially provide universal service support in areas in excess of what is needed, thus placing an undue burden on scarce USF resources, while at the same time, under a capped USF, not allowing sufficient support for areas in need. Accordingly, the Nebraska Companies recommend a second mechanism to address this concern that builds upon the future investment regression analysis noted above.

Consistent with the Commission's discussion of regression analyses in the *CAF NPRM*,[22] the same regression study discussed in the preceding section would be used to classify existing booked investments. Existing investment would be divided into two categories: "reasonable" and "extraordinary." Support would be provided based on recognition of all existing booked costs but at differing return levels. "Reasonable" levels of investment would be those that the regression analysis confirms are at or below the regression limit based on a company's operating and geographic attributes, whereas the portion of booked investment above the new regression investment limit would be considered "extraordinary." Federal USF recovery would be allowed

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[21] *See,* Rural Associations Comments at 23.

[22] *See, CAF NPRM* at paras. 203-206.

at the currently authorized return on capital for “reasonable” levels of investment.[23] Recovery for “extraordinary” capital expenditures would be based on a lower overall return using the current authorized weighted cost of debt that is sufficient to recover existing indebtedness.[24]

The Nebraska Companies respectfully submit that this dichotomy – reasonable investment and extraordinary investment – offers a fair balance between the interests of regulators and companies. On the one hand, since the Commission has not established any previous investment limits, the use of these classifications provide companies with an opportunity to service debt on all incurred investments, even if those investments will now be defined for the first time as “extraordinary.” Without this recovery, some companies may not be able to meet their financial commitments and could even face bankruptcy. On the other hand, this proposal eliminates equity recovery on existing investments that the regression analysis would label as “extraordinary.” This result conserves USF resources and is a more targeted means to address a change in the return on investment as compared to reducing RoR companies’ return on total booked investment as proposed in the Industry Plans.[25] Overall, this proposal allows the Commission to target limited USF towards companies that will make investment choices based on the decisions and mechanisms arising from this proceeding, without penalizing companies that based their investment decisions on the system of regulation in place *before* any

[23] Due to the lack of clarity within the RLEC Plan regarding the proposal to base federal USF disbursements on “take rates” of broadband (*see*, Section I.H, *infra*) the possibility also exists that high cost companies with significant annual depreciation expenses may not even recover their “reasonable” level of investments. Thus, close scrutiny by the Commission is required on this aspect of the RLEC Plan based on the “budgeted” USF amount of RLEC Plan.

[24] At the time the Commission last evaluated returns, the prevailing debt interest rate was 8.8%. Assuming a debt ratio of 55.8%, the weighted cost of debt was calculated to be 3.89%. *See generally*, *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Order*, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990).

[25] *See*, *US Telecom Letter* at 2.

reform.[26] Thus, the Nebraska Companies respectfully submit that this proposal provides the necessary "measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption" desired by the Commission to maintain the financial viability of companies.[27]

B. The RLEC Plan does not Properly Control Operating Costs.

Based on the Commission's concern that RoR universal service mechanisms do not provide incentives for controlling operating costs,[28] and the suggestions of the *Further Inquiry* regarding new coefficients for the existing corporate operations cap,[29] the Rural Associations proposed that the Commission should apply the same corporate operations limitation currently imposed on High Cost Loop Support ("HCLS") to Local Switching Support ("LSS") and Interstate Common Line Support ("ICLS").[30] The Rural Associations also assert that no further adjustments are needed to address concerns regarding recovery of excessive levels of corporate operations expenses through the High Cost program.[31]

The Nebraska Companies respectfully suggest that the positions adopted by the Rural Associations do not adequately address the Commission's concern regarding operating expenses, nor would the RLEC Plan reasonably limit operating expenses or the potential for gaming. Accordingly, for all of the reasons that were stated in the Nebraska Companies comments, three additional measures are needed. First, the cap should be broadened to include all expense categories to eliminate opportunities to manipulate expense classifications and circumvent the

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[26] *See*, *Further Inquiry* at 9.

[27] *See*, *CAF NPRM* at para. 12.

[28] *See*, *id*. at para. 162.

[29] *See*, *Further Inquiry* at 6.

[30] *See*, Rural Associations Comments at ii and 21-22.

[31] *See*, *id*. at 22.

cap.[32] Second, as with capital investment limits discussed above, any operating expense limit should be set at a level higher than the industry mean with a streamlined waiver process available to those companies with legitimate expenses that exceed the limit.[33] Finally, if the Commission chooses to continue only limiting corporate operating expenses, such a cap should be applied on a holding company basis, not on a study area basis, in order to minimize the opportunity for gaming.[34]

In contrast to the Rural Associations' proposal, the Nebraska Companies' recommendations promote the Commission's goal of efficiency, limit the potential for holding companies to arbitrarily allocate expenses among their study areas to avoid the corporate operations expense limitations,[35] avoid the potential for inconsistent interpretations of Part 32 expense classifications,[36] and broaden the base of the limit so that it applies to total operating expenses.[37] For these reasons, the Nebraska Companies respectfully submit that the Rural Associations' proposal not be adopted and that the Commission should consider the Nebraska Companies' proposal instead.

C. The RLEC Plan would not Limit Funding in Areas with Unsubsidized Competitors.

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[32] *See*, *id*. at 44.

[33] *See*, *id*. at 46-47.

[34] *See*, Nebraska Companies Comments at 43 and 45.

[35] *See*, *CAF NPRM* at para. 197.

[36] *See*, Nebraska Companies Comments at 42-45.

[37] *See*, *Ex Parte* Letter from the Nebraska Companies, WC Docket No. 10-90 *et al*., filed April 22, 2011; *Ex Parte* Letter from the Nebraska Companies, WC Docket No. 10-90 *et al*., filed May 13, 2011.

The *CAF NPRM* proposed to target support more directly to the areas of greatest need by requiring rural carriers to disaggregate support within existing study areas beginning in 2012.[38] The *CAF NPRM* also sought comment on whether the Commission should encourage states to redraw existing study area boundaries to create more narrowly targeted service areas for purposes of the CAF.[39] The *Further Inquiry* asked for comment on proposals to limit support in competitive areas.[40]

In the *April RLEC Plan,* the Rural Associations discussed a procedure under which a competitor could initiate a proceeding to reduce an incumbent's support in a competitive area. The petitioner would be required to show, among other things, that it has an ETC designation, can deliver voice and broadband to 95 percent of the households in the competitive area, and does not cross-subsidize the area.[41] If the petitioner were successful, the ILEC's funding would be eliminated for the competitive area.[42] At the time, the Rural Associations urged "great caution" in implementing this concept, particularly over the risk that disaggregation could increase the demand for universal service support.[43] The Rural Associations further argued that any funding reductions should apply only to prospective investment and expenses.[44] The Rural Associations also proposed that if support were eliminated in the competitive area, then the RoR carrier should no longer have carrier-of-last-resort ("COLR") responsibilities in that area. In this case, the Commission would need to preempt a state's COLR designation, an action that the

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[38] *See*, *CAF NPRM* at paras. 375-383.

[39] *See*, *id*. at paras. 384-388.

[40] *See*, *Further Inquiry* at pages 6-7.

[41] *See*, *April RLEC Plan* at 52.

[42] *See*, *id*. at 55.

[43] *See*, *id*. at 51.

[44] *See*, *id*. at 56.

Rural Associations admitted lacks clear legal authority.[45] In their comments in response to the *Further Inquiry*, the Rural Associations have backed away from even this modest step forward. The Rural Associations now urge the Commission to refrain from adopting any "donut and hole" mechanism, although the Commission might continue to study the matter.[46]

Like the Rural Associations, the Nebraska Companies recognize the difficulties in addressing the "donut and hole" issue. Nonetheless, the issue needs to be addressed in order to provide a comprehensive and cohesive plan.[47] Thus, the Nebraska Companies agree that from a pragmatic standpoint, it would be extremely difficult to identify and audit those service areas where there is a terrestrial broadband competitor.[48] Moreover, as competitive situations change, identification of such competitive areas would need to be constantly updated.

As the Nebraska Companies have stated in previous filings with the Commission,[49] the Commission may want to consider following the Nebraska Universal Service Fund approach of

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[45] *See*, *id*. at 55.

[46] *See*, Rural Associations Comments at 25.

[47] If further review and analysis of the resolution of the "donut and hole" issue is required, at least an interim fix can be instituted to ensure that federal USF is targeted to unserved or underserved RoR company operating areas.

[48] Assuming that broadband is determined by the Commission and the Joint Board on universal service to be part of the definition of universal service (*see*, 47 U.S.C. §§254(a) and 254(c)), the only possible "competitor" that could supplant the need for USF to a given portion of an RLECs' service area would be an entity that is "telecommunications carrier" (a defined term which the Commission has determined to be same as the term "common carrier") and provides telecommunications services like that RLEC. *Compare* 47 U.S.C. §254(b)(3), §§254(c)(1) and (c)(1)(C), §254(e); 214(e)(1), §214(e)(3), §214(e)(4) and §214(e)(5); *see also*, 47 U.S.C. §§ 153(43) and (46); *Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921, 926-927 (D.C. Cir. 1999) (The term "telecommunications carrier" means "common carrier."); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) *cert denied*, 425 U.S. 992.

[49] *See*, Reply Comments of the Nebraska Companies, WC Docket No. 10-90 *et al*., filed August 11, 2010 at 7-8; Comments of the Nebraska Companies, WC Docket No. 10-90, *et al*., filed July 12, 2010 at 26-27, and Appendix B.

directing all additional future support only to *truly* high-cost areas determined by use of density and cost factors. This method could be used to target the majority of support to areas with only one provider. This approach has worked in Nebraska, since low cost and higher density can be a proxy for the presence of competition. This approach would also eliminate the expense of filing disaggregation plans. Under the Nebraska Companies' proposal, state commissions would continue to decide when ILECs should be relieved of COLR obligations. Whether elimination of COLR obligations is appropriate might depend, for example, on whether it is appropriate to recognize that competitive areas share joint and common costs with areas that do not have competition, and thus should receive some level of support, albeit diminished.

D. The RLEC Plan does not Address the Concentration of HCLS Among Carriers with the Highest Costs Per Loop.

As a result of the operations of the current federal USF rules,[50] HCLS has become concentrated among the carriers with the highest costs per loop based on individual RoR company investment decisions and the method by which annual changes in HCLS are made. The former being what the Commission recognized in the *CAF NPRM* as the "ratcheting up" effect[51] and the latter being the result of the imposition of a cap on HCLS. While the RLEC Plan is silent on the concentration of HCLS, any comprehensive review of the current federal USF program needs to address this HCLS issue.

The first cause of HCLS concentration is the result of individual company investment decisions. As companies invest in advanced networks, there is an increase in these companies' cost per loop. Thus, their HCLS draw from the USF increases. Some have called this

[50] 47 C.F.R. §§ 36.621 and 36.631.

[51] *See*, *CAF NPRM* at para. 177.

phenomenon, the "race to the top."[52] Since the current HCLS is capped, the effect of the current rules is to reduce HCLS recovery for companies with constant costs, as other companies making new investments draw increasing shares of the available limited USF support amount. To address this issue, the Nebraska Companies have suggested, and request the Commission to adopt, constraints on the amount of future RoR companies' investments that will help mitigate this negative impact of the current HCLS program.

The second cause associated with the concentration of HCLS dollars to RoR companies is the mechanism for annual change in the HCLS size. HCLS fund size is indexed by a combination of the consumer price index and the change in access lines.[53] In recent years, access lines have decreased and there has been little or no inflation.[54] As a result, the allowed HCLS fund size has decreased.[55] To accomplish these decreases, the Universal Service Administrative Company increases the "National Average Cost per Loop" parameter. The net effect is to eliminate a high percentage of support for those carriers with costs near the "National Average Cost per Loop" that are receiving the smallest HCLS support levels. This negative and unfair impact on the cost recovery levels for RoR companies should be eliminated.

Any network that supports broadband must be funded, even if customers are no longer subscribing to local exchange service. Indeed, while losing subscribers *harms* the business

[52] *See, e.g., id.* at para. 179.

[53] 47 C.F.R. § 36.604.

[54] *See*, 2010 Universal Service Monitoring Report, CC Docket No. 98-202, CC Docket No. 69-45, released December 30, 2010 at Table 3.20. Available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303886A1.pdf; *see also*, US Department of Commerce, Bureau of Economic Analysis, Results of the 2011 Flexible Annual Revision of the National Income and Product Accounts, July 29, 2011 at 7. Available at: http://www.bea.gov/national/pdf/NIPAbriefing_AR2011.pdf

[55] *See*, 2010 Universal Service Monitoring Report, CC Docket No. 98-202, CC Docket No. 69-45, released December 30, 2010 at Table 3.2.

prospects of most installed networks, this fact does not correlate to a reduced need for support, particularly since, as COLRs, RoR companies must continue to make the network available to all users upon reasonable request. For this reason, a USF designed to support broadband should not be indexed by the change in access lines. Rather, the Nebraska Companies recommend that the index should be changed to either eliminate the access line component altogether or to include the change in both access lines and broadband lines.

E. The RLEC Plan does not Adequately Address Problems with the Safety Net Additive Program.

The Safety Net Additive ("SNA") was created to address the support needs of carriers that make significant increases in investment. Contrary to the original intent of the rule to provide additional funding only for new investment, some companies are receiving SNA funds simply because of line loss rather than significant investment. The *CAF NPRM* proposed to eliminate SNA support.[56]

The RLEC Plan proposes to address this problem by modifying the SNA qualification test so that it is based on increases in total investment rather than the current percentage increase in Telecommunications Plant in Service ("TPIS") investment per loop.[57] The RLEC Plan also proposes that rule changes should apply only to future investment.[58] While the Nebraska Companies had hoped that Rural Associations would address this issue in the Rural Association Comments, they did not. Thus, the need remains for the Commission to fully address the impact of SNA upon any future federal USF/CAF.

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[56] *See*, *CAF NPRM* at paras. 175 and 183-85.

[57] *See*, *April RLEC Plan* at 42.

[58] *See*, *id*. at 43.

The Nebraska Companies agree with the Rural Associations that the Commission should not provide SNA to those companies that have not increased total plant in service investment by 14%.[59] Companies that legitimately increased their investments in anticipation of SNA support should continue to receive that support for the remaining duration of their support periods, which are three years in length.

The Nebraska Companies disagree, however, with providing continued SNA support for companies that should not have received it in the first place. The Nebraska Companies therefore recommend that an existing recipient should continue to receive SNA if it can demonstrate that its aggregate amount of TPIS had increased by 14% annually at the time it initially qualified. Based on Commission efforts to rationally control and direct the level of federal USF funding, it is reasonable to remove SNA from companies that have received such funding due to line decreases, as well as not permit new recipients of SNA.

F. The RLEC Plan Maintains Local Switching Support in its Traditional Form Despite Fundamental Changes to Switching Technology and Cost.

The LSS program is based on the number of access lines in a carrier's study area, a measure of size that determines both eligibility and the LSS benefit amount.[60] The Commission proposed combining LSS and HCLS into one fund that pays support only to areas with high costs.[61] Yet, the RLEC Plan proposes to maintain LSS[62] even though size-based eligibility for LSS may be inappropriate in an IP-based environment where soft switches and routers tend to be cheaper and more efficiently scaled to smaller operating sizes.[63] In their recent comments, the

[59] *See, Further Inquiry* at page 9.

[60] 47 C.F.R. § 54.301.

[61] *See, CAF NPRM* at para. 191.

[62] *See, April RLEC Plan* at 43.

[63] *See, CAF NPRM* at para. 187.

Rural Associations opposed “attempt[ing] to limit recovery of switch-related investment via the Local Switching Support (LSS) mechanism.”[64] In essence, the RLEC Plan would maintain LSS for eight years or longer without structural modification.[65] This aspect of the RLEC Plan should be modified.

The Nebraska Companies recognize that technology and cost changes have made size-based eligibility for LSS inappropriate. In today’s environment, this structure adds unnecessary cost to the network and creates needless demand for LSS support. For example, holding companies can continue to maintain separate RoR study areas within a state to increase their LSS thereby receiving more support than if their study areas were combined. In some cases, the aggregate company within a state would not be eligible for LSS. Accordingly, the Nebraska Companies recommend that universal service funding support the aggregate costs of switching and loop plant of all affiliated RoR companies’ operations within a state.

Companies build their networks considering the tradeoffs between the two kinds of plant, trying to minimize both the high costs of long loops and the high costs of multiple switches. Continuing LSS in its present form would create incentives for companies to choose switching investments rather than less switching-centric network designs in order to maximize LSS support even though, as the network transitions to broadband, generally switching investments are declining while loop investments are increasing. The Nebraska Companies agree with the Commission that LSS should be combined with HCLS and then eventually this combined fund should be merged into the CAF.[66] Merging LSS into HCLS solves the size and holding company

[64] *See*, Rural Associations Comments at ii and 43.

[65] *See*, *April RLEC Plan* at 43.

[66] *See*, *CAF NPRM* at paras. 192-193.

problems because the driver of the HCLS mechanism is the RoR company's costs rather than the company's size.

Finally, the Rural Associations argue that if LSS were eliminated, then interstate switching rates necessarily will increase absent other actions.[67] The Nebraska Companies also, therefore, propose that interstate access rates be capped at existing levels. Switched revenue requirements not recovered through capped interstate switched access rates should be recovered through the RM.

G. The RLEC Plan does not Encourage Additional Broadband Investments in Unserved or Underserved Areas Served by Higher Cost RoR Companies.

The *CAF NPRM* asked whether the Commission should impose a service requirement on recipients, or a service requirement and a coverage requirement on recipients.[68] The RLEC Plan does neither. The RLEC Plan does not properly describe (and thus encourage) how universal service recipients will be required to make additional broadband investments in unserved or underserved areas, particularly in the higher cost areas served by RoR companies.[69] Rather, the RLEC Plan professes to promote "responsible 'edging out' of broadband into unserved areas at a reasonable pace''[70] but does not specify the pace or requirement to deploy infrastructure.

The recent comments of the Rural Associations assert that they "understand – and support in concept – the Commission's consideration of potential coverage and service

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[67] *See*, Rural Associations Comments at 43.

[68] *See*, *CAF NPRM* at para. 124.

[69] *See*, *April RLEC Plan* at v.

[70] *See*, *id*.

obligations as a significant and tangible measure of accountability."[71] The Rural Associations declined, however, to recommend specific performance proposals.[72]

The Nebraska Companies understand that the Commission seeks accountability from carriers. Thus, contrary to the RLEC Plan, the Commission should require all carriers receiving CAF to deploy broadband over specified timeframes and to a specified percentage of locations. The targets should take into account available funding, accurate data on existing coverage and the availability of supplemental state funding. The deployment percentages should also be based on the attributes of the area served. This recommendation is consistent with the proposal put forth by the State Members of the Joint Board.[73]

The lack of specificity with respect to the RLEC Plan's vague deployment requirements may be because RoR companies serving the highest-cost areas may need additional support in order to deploy ubiquitous broadband. While the Commission has conceptually supported directing support to higher-cost areas that are more likely to be un-served or under-served,[74] the RLEC Plan, however, does no such thing.[75]

The Nebraska Companies have reviewed price-outs of the RLEC Plan. Although the Nebraska Companies understand that National Exchange Carrier Association, Inc. ("NECA") maintains that the details are proprietary, the Nebraska Companies' analysis indicates that, in general, low-cost companies that currently do not receive HCLS will see the largest increases in support under the RLEC Plan. The Nebraska Companies further understand that the current

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[71] *See*, Rural Associations Comments at 74.

[72] *See*, *id.*

[73] *See*, Comments of the State Members of the Federal State Joint Board on Universal Service, WC Docket No. 10-90, *et al.*, filed May 2, 2011 at 31-65.

[74] *See*, *e.g.*, *CAF NPRM* at para. 190.

[75] *See*, Nebraska Companies Comments at 76-77.

price-out templates provided to rural companies do not estimate support reductions which will be necessary to meet the agreed-upon "budget" limitation.[76] Moreover, the Nebraska Companies also understand that the NECA price-outs show increases in funding for all line size groups, but such a result is not realistic under the budget cap that is also part of the negotiated RLEC Plan. Thus, if the Commission imposes a budget cap on support to RoR companies, high-cost companies that expect increased support levels under the RLEC Plan may in reality experience support decreases and will be deprived of an opportunity to recover their costs.

Accordingly, the Nebraska Companies respectfully suggest that this aspect of the RLEC Plan be examined to ensure that under-funding does not occur within the "budget" that the RLEC Plan proposes. Absent such close scrutiny, the Nebraska Companies do not understand how a factual finding regarding "sufficient" and "predictable" federal USF/CAF can be made.[77]

H. The RLEC Plan Shifts Support Away from Companies Most in Need of Universal Service Support.

The *CAF NPRM* suggested that the Commission is interested in targeting support to areas of high cost.[78] The Commission appears to want to ensure that the USF directed to incumbent RoR company areas is better targeted to where it is needed to advance and maintain universal service, but not to change the allocation of costs between the jurisdictions.[79] As stated in the context of its discussion regarding potential modification to the current HCLS working loops recovery thresholds, the Commission indicated:

> . . . these proposals would not affect the relative balance of cost recovery from the interstate and intrastate jurisdictions at an aggregate level as we expect the effect to spread federal support from a smaller number of carriers to a larger number of

[76] *See, e.g., US Telecom Letter* at 2.

[77] *See*, 47 U.S.C. § 254(b)(5).

[78] *See*, *CAF NPRM* at paras. 372-374.

[79] *See*, *id*. at para. 182.

> carriers. However, to the extent federal support would be lower for some carriers in particular instances, that could create the need for increased state support or higher intrastate rates.[80]

The Nebraska Companies agree. However, the RLEC Plan does not achieve these objectives.

Understanding the current system requires an understanding of both universal service support rules and separations rules. Currently, the federal jurisdiction supports 25 percent of a RoR company's loop plant investment through a combination of ICLS and SLCs.[81] In addition, an expense adjustment to move costs from the intrastate jurisdiction to the interstate jurisdiction is made to support high-cost loops.[82] Under these two methods, most high-cost companies have traditionally recovered a large percentage of their loop costs from the interstate jurisdiction. Lower-cost companies that do not receive HCLS allocate exactly 25 percent of their loop cost to the interstate jurisdiction.

The RLEC Plan is a dramatic departure from this allocation of costs between the jurisdictions. Under the RLEC Plan, loop costs would be allocated to the interstate jurisdiction based on the greater of a company's broadband adoption rate or 25 percent.[83] Thus, contrary to the current method of jurisdictional allocations under separations, under the RLEC Plan the greater a company's take rate and with it, the greater the customer revenues that such telecommunications carrier receives for providing the broadband "pipe," the greater the portion of its costs that will be recovered from federal support, up to a 75 percent cap. This provision, coupled with the "grandfathered HCLS" contained within the RLEC Plan,[84] means that a

[80] *See, id*.

[81] *See, id*. at para. 180.

[82] 47 C.F.R. § 36.603(a).

[83] *See, April RLEC Plan* at 32.

[84] Specifically, if a company's additional costs assigned to interstate through the broadband take

company's interstate allocation can be higher than it is currently, but not lower. This increase in the portion of support from interstate sources does not comport with the Commission's statements[85] regarding increasing state participation in universal service funding. Moreover, this new allocation method moves USF funding toward those companies with high take rates but not necessarily to those with high costs or that need to make additional broadband investment. Further, now that the Rural Associations have agreed to a "budget" cap under the negotiated agreement with the ABC Plan Filing Companies, the Nebraska Companies do not believe that the proposed grandfathering provision will fit within the agreed-to cap,[86] which will most harm the high-cost companies that receive HCLS. The RLEC Plan's unexplained departure from current separation rules requires closer examination to ensure that the "specific" and "predictable" universal service standards of the Act are met.[87]

The Nebraska Companies note that, based on their experience, lower cost RoR companies have been able to build out broadband to serve nearly all their customers. All else being equal, a high build-out level produces a high take rate. For these reasons, RoR companies with high take rates generally are lower-cost companies. In contrast, high-cost RoR companies may not yet have built out broadband facilities to their entire customer base. Thus, under the take-rate allocation method in the RLEC Plan, high-cost RoR companies may never be able to deploy broadband to their customers, and thus raise their take rate, because they will have insufficient federal USF.[88] The potential for this result is not explained or justified. It makes little sense to

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rate were less than the current HCLS, the difference between these costs would continue to be recovered in "Grandfathered HCLS."

[85] *See*, *CAF NPRM* at para. 87.

[86] *See*, Nebraska Companies Comments at 77.

[87] *See*, 47 U.S.C. § 254(b)(5).

[88] *See*, Nebraska Companies Comments at 76-77.

direct additional federal USF to low-cost companies that do not need additional loop support, particularly under budgetary constraints that could very well result in insufficient support for high-cost RoR companies.

To address this issue, the Nebraska Companies encourage the Commission to assure itself as a result of its independent investigation of the financial impacts of the RLEC Plan under a capped USF, that the anticipated federal USF disbursement levels for lower-cost to higher-cost RoR companies (as reflected in the various "cost per loop" groups under the current USF regime) are at sufficient and predictable levels as required by Section 254(b)(5) of the Act. Accordingly, for all of the reasons stated herein, the Nebraska Companies recommend that the Commission maintain the existing interstate allocations, except for an expense adjustment related to the RM after compliance with the Separations Joint Board process.

I. The RLEC Plan's "Wholesale Benchmark" is Unexplained and could Lead to Gaming.

Under the RLEC Plan, when evaluating the need for high-cost support, broadband costs are compared to a "wholesale broadband benchmark," which would be "designed to represent the costs of providing reasonably comparable wholesale broadband transmission services in urban areas."[89] The *wholesale* broadband benchmark proposed in the RLEC Plan is inconsistent with other benchmark definitions and may be subject to manipulation. Moreover, the RLEC Plan proponents have not demonstrated that a "wholesale" benchmark derived from selling services to a reseller is in compliance with the requirement that reasonably comparable rates are to be available to consumers.[90] Thus, benchmarks are generally considered to be the *retail* amount

[89] *See, April 18 RLEC Plan* at iv.

[90] *See*, 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications . . . services . . . available at rates that are reasonably comparable to rates

charged to customers and are uniform for all companies. Under the RLEC Plan, the wholesale broadband benchmark is a combination of a fixed and variable component. The fixed component is related to the NECA tariff rate for DSL. The variable component increases as a company's take rate increases; thus, this component varies by company.

Under the RLEC Plan, it appears that the Rural Associations intentionally made the benchmark higher for RoR companies with high take rates in an attempt to mitigate the large increases in support under the RLEC Plan to the low-cost RoR companies which, absent the varying benchmark, would have been even more significant. However, the Nebraska Companies are concerned that such a non-conventional benchmark does not achieve the result that the Rural Associations intended and will provide opportunities for gaming.

Specifically, could a company lower its retail broadband rates to increase its interstate allocation enough that it would be profitable to absorb the benchmark increase resulting from a higher take rate? Could NECA change the wholesale DSL rate to adjust the wholesale broadband benchmark? Could a company not subject to the NECA tariff that sets its own DSL rate lower its effective benchmark? None of these possibilities appears to be related to cost recovery, yet any of these possibilities could affect a company's draw from the federal USF and each remains a possibility under the RLEC Plan. Furthermore, the Nebraska Companies maintain that support would not be predictable if a RoR company's interstate allocation from a capped USF is influenced by the actions of other RoR companies. Under the RLEC Plan, the actions of other companies appear to influence a company's support amounts even more than with capped HCLS, where one company's investment decisions have affected the support amounts of other companies.

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charged for similar services in urban areas.").

Instead, the Nebraska Companies recommend that the Commission establish a *retail* broadband benchmark based on the price of comparable service in a sample of urban areas as must be established under Section 254(b) of the Act. Comparability should be determined at a specific speed determined by the Commission. Initially, that speed should be set at 4/1 Mbps, and it should be revised from time to time in order to ensure that rural consumers receive both "reasonably comparable" services and rates. The nation cannot and should not have vastly different benchmarks for different recipients of USF and their customers if compliance with the comparability standards in Section 254(b)(3) of the Act is to be achieved. Moreover, it would be inconsistent to set a *retail* benchmark for price cap companies, yet set a *wholesale* benchmark for RoR companies.

Of course, if revenues from a service are considered when determining the need for support, so too must all of the costs be considered. Thus, in the case of broadband as a supported service, the middle mile and Internet backbone costs associated with providing customers with broadband service must be included with the other supported costs. The Nebraska Companies emphasize that middle mile costs are not uniform nationwide, but in the Rural Associations' price out of the RLEC Plan, middle mile costs are estimated to be a fixed amount per broadband line, $5.34 per month.[91] The distance to an Internet backbone provider connection point, the competitive landscape and the existence of state networks all affect middle mile costs. Thus, the NECA estimate of middle mile costs using a uniform rate will generally understate high-cost RoR companies' costs, especially for companies serving expansive rural area such as the

[91] *See, Ex Parte* letter from the Rural Associations and NECA, WC Docket No. 10-90 *et al*., filed August 29, 2011. In the experience of one Nebraska Company, middle mile costs per customer are nearly double the amount estimated by NECA.

Nebraska Companies that have a long transport distance to an Internet backbone provider connection point.

J. The RLEC Plan's Retail Benchmark should be Set at a Level Comparable to Rates in Urban Areas and SLC Increases should not be Required for Companies Already Charging Customers Rates at or Above the Benchmark.

The Industry Plans propose two different methods for establishing benchmarks. For RoR companies, the *retail* local rate benchmark is $25 per line per month, which may either be charged to a customer or imputed in the calculation of RM.[92] For price cap companies the *retail* local service benchmark is set at $30 per line per month.[93] The retail benchmark in the RLEC Plan is not reasonable in comparison to early adopter state benchmarks nor is it reasonable in comparison to the benchmark proposed for price-cap companies, despite the arguments provided in the Rural Associations Comments.[94]

While the Rural Associations' intent appears to be that RoR companies do not need to further increase SLC rates once the $25 benchmark is reached, because of the wording in footnote 1 of the *US Telecom Letter* and in the Rural Associations Comments, one must conclude that RoR companies at the SLC cap must continue to increase SLC rates even after the $25 benchmark is reached. Without language in the RLEC Plan defining when the SLC increases would take place, as was included in the ABC Plan,[95] it appears that the RLEC Plan will make RoR companies with already high rates increase customer rates further.

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92 *See, April RLEC Plan* at 16.

93 *See, US Telecom Letter* at 6, 12.

94 *See,* Rural Associations Comments at 46-47.

95 *See,* ABC Plan, Attachment 1 at 6. "SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of $30 per month."

The Commission has asked for comment on how the benchmark rates proposed by the ABC Plan and the RLEC Plan would affect consumers in states that have already implemented reforms.[96] Previously, the Commission has stated that rates for voice service should be reasonably comparable and should not penalize states that have already undertaken intercarrier compensation reform and rebalanced rates.[97] Based on this premise, the Nebraska Companies believe that a $25 *retail* local benchmark is not high enough to be comparable to benchmarks already established by early-adopter states, such as Nebraska. The Nebraska Companies recommend that the Commission set the local rate benchmarks at the national average urban rate plus other mandatory charges, such as federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, as applicable. This benchmark rate would be comparable to the rates charged in early adopter states, such as Nebraska, where local rates and intercarrier compensation rates have already been rebalanced and would also be comparable to the benchmark proposed for price cap carriers.

II. THE INDUSTRY PLANS' "RM" DOES NOT MEET THE "SUFFICIENCY" REQUIREMENTS OF THE SECTION 254(B) OF THE ACT.

A. The Proposals of the Industry Plans for Revenue Neutral Intercarrier Compensation Recovery have not been Reconciled with the Commission's Obligation to Provide Sufficient, but not Excessive Support.

Under the Industry Plans, the RM is calculated differently for RoR and price cap carriers. There are differences in the duration of the RM, as well as in the method of calculation. The Nebraska Companies had hoped that further details would be provided by the Industry Plans' proponents on the RM aspect of both Plans, but none was provided. Accordingly, the Nebraska Companies do not believe that there is any basis for the Commission to determine that the RM

[96] *See*, *Further Inquiry* at 11.

[97] *See*, *CAF NPRM* at paras. 80 and 545.

proposals would meet the "sufficiency" requirement (and, in particular, that no more than "sufficient" support be provided) as required by Act.[98]

For example, the RM for RoR companies, as calculated in the RLEC Plan, does not consider the complexities of a pooling environment.[99] In a pool, some companies are net payers and others are net receivers. The net "settlement adjusted" rate should be the basis of the RM calculation because that rate more clearly reflects reality. Thus, if a RoR company *billed* $.06 per minute for interstate minutes, and *contributed* the equivalent of $.02 per minute to the pool, then that RoR company has a "*settlement adjusted*" interstate rate of $.04 per minute. Assuming that such company's intrastate rate was $.05 per minute, an RM calculated on *billed* interstate rates would be zero because interstate rates are higher than intrastate rates, but an RM based on "*settlement adjusted*" interstate rates would be $.01 per minute times demand. Of course, the company would then need to reduce intrastate rates to the interstate "settled" rate to avoid over recovering. An RM based on settled interstate rates is a more accurate reflection of companies' true switched access costs and revenues.

The complexity of an RM in a pooled environment was made even more apparent as NECA revised its tariff in July 2011. In that tariff filing, NECA increased its Band 2 tandem switched transport rates nearly 70% and all switching rates 22%.[100] By increasing transport rates so dramatically, intrastate switched access rates for some of the Nebraska Companies are now

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[98] 47 U.S.C. § 254(b)(5).

[99] As the Nebraska Companies understand the RLEC Plan, RoR companies' interstate rates would be capped. Any shortfall between revenue requirements and capped revenues would be collected from an RM. As intercarrier compensation terminating rates decrease, RoR companies would receive RM for the difference between their intrastate and interstate intercarrier compensation revenues for all access traffic, subject to an earnings limit. The RM would be adjusted over time by the change in interstate revenue requirements.

[100] *See,* NECA F.C.C. Tariff No. 5, Transmittal No. 1314, filed June 16, 2011; effective July 1, 2011.

lower than their comparable interstate (and the same may be true for RoR companies in other states), which means that some high-cost RoR companies will not receive RM and others will have reduced RM.[101]

B. Under Some Circumstances, the Industry Plans would Provide Excessive Support.

For price cap companies, the ABC Plan proposes to provide a RM equal to 90% of the revenue from rate changes less SLC increases.[102] The ABC Plan does not specify how the 90% was determined, although presumably it was a negotiated amount. In the *Further Inquiry*, the Commission has asked for alternative approaches for calculation of price cap carriers' recovery mechanism.[103]

For larger ILECs, even while switched access revenues have been decreasing, special access revenues have been increasing dramatically over the years will accelerate in an all-IP environment. Scarce federal USF resources should not be artificially siphoned off to offset large companies' switched access reductions without considering these special access revenue increases. Indeed, the primary incentive for many companies to convert to price caps was to secure additional profits from special access services, which would not be possible if under continued RoR regulation. Price cap companies, in particular, have seen large increases in special access revenues, which in many cases may be larger than their switched access revenue decreases. If RM is being distributed in an attempt to insure sufficient revenues, then decreases in switched revenues should be offset by increases in special revenues for price cap carriers. Even though price cap companies are not subject to a full RoR or revenue requirement review,

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[101] Conversely, the lower-cost companies in Band 1 experienced reduced transport rates and thus will see increased amounts of RM because of this rate change.

[102] *See*, *US Telecom Letter* at 12.

[103] *See*, *Further Inquiry* at 14.

the Nebraska Companies nonetheless submit that it makes sense to apply some limit on RM to comply with the Commission's desire to provide sufficient, but not excessive support.[104]

III. OTHER ASPECTS OF THE ABC PLAN SHOULD BE REJECTED CONSISTENT WITH THE RECORD AND THE COMMENTS OF THE NEBRASKA COMPANIES.

A. Commission Preemption of State Authority over Intrastate Access and Reciprocal Compensation Rates should be Rejected; Advancement of the Federal-State Partnership on Universal Service and ICC Reform Should Be Pursued.

1. Preemption of State Commission Jurisdiction Envisioned in the ABC Plan has no Basis and should be Rejected.

The contentions raised in the ABC Plan regarding the Commission's ability to preempt state commission authority have been demonstrated to be without basis.[105] For their part, the Nebraska Companies have also demonstrated that there is no merit to the arguments which the ABC Plan Filing Companies have advanced with respect to the Commission's authority to

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[104] *See*, *CAF NPRM* at para. 31.

[105] *See, e.g.*, Further Comments of the National Association of Regulatory Utility Commissioners, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("NARUC Comments") at 5-25; Pennsylvania Commission Comments at 11-13 and Attachment "Legal Memorandum Analysis of the Pennsylvania Public Utility Commission (the "Pa PUC Legal Memorandum"); Nebraska Commission Comments at 6-10; Comments of Cincinnati Bell Inc. on Proposed Intercarrier Compensation Reform Plans, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 11-18; Comments of the Connecticut Department of Energy and Environmental Protection Public Utilities Regulatory Authority, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 4-5, 7; Comments of the Public Service Commission of the District of Columbia, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 2-3; Comments of the Iowa Utilities Board, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 3; Comments on Further Inquiry – Intercarrier Compensation and Universal Service Transformation Proceeding [of the Maine Public Utilities Commission, Vermont Public Service Board and Vermont Department of Public Service, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 12-16; Letter from the Mississippi Public Service Commission to Chairman Julius Genachowski, WC Docket No. 10-90 *et al.*, dated August 22, 2011at 1-2; Comments of the New York Public Service Commission, WC Docket No. 10-90 *et al.*, dated August 24, 2011at 8-14; Comments of the Public Utility Commission of Oregon, WC Docket No. 10-90 *et al.*, dated August 24, 2011at 1-2; Further Comments of the South Dakota Public Utilities Commission, , WC Docket No. 10-90 *et al.*, dated August 24, 2011at 4-5; Comments of the Virginia Corporation Commission, WC Docket No. 10-90 *et al.*, dated August 24, 2011at 2-5.

preempt state jurisdiction.[106] Not only is this true with respect to the setting of intrastate access rates and reciprocal compensation through the establishment of a "default" rate, but also with respect to the other forms of preemption that the ABC Plan Filing Companies seek.

While parties, including the ABC Plan Filing Companies, continue their mantra of Commission authority to establish a "uniform" rate for all services,[107] those contentions ultimately must fail. By way of example only, these parties cannot reconcile their position with the fact that the United States Supreme Court has indicated that the Commission cannot pursue a federal policy in the absence of statutory authority to do so.[108] Commenting parties opposing preemption, including the Nebraska Companies, have demonstrated that there is no statutory basis for the preemption sought by the ABC Plan Filing Companies.

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[106] *See*, Nebraska Companies Comments at 13-42. It is also unfortunate that, in a manner contrary to the policy of encouraging the long-established federal-state partnership on universal service (*see, e.g., CAF NPRM* at para. 84), the Rural Associations propose that state commissions should be preempted from establishing state-related COLR obligations. "The states should not have the ability to dismiss or expand upon the federal obligations." Rural Association Comments at 33, n.58; *see also, id*. at 32-33. The Nebraska Companies disagree with the Rural Associations for the reasons already stated. *See, e.g.*, Nebraska Companies Comments at 39-41, 79-81. Moreover, since the Rural Association Comments did not oppose state preemption of intrastate access and reciprocal compensation rates, or clarify that state preemption regarding these issues is inapplicable to rate-of-return carriers, the Rural Associations are tacitly supporting preemption concerning these issues. The Nebraska Companies maintain that preemption of state authority relating to intrastate access and reciprocal compensation is improper.

[107] *See, e.g.*, Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("ABC Plan Filing Companies Comments") at 18-21; Comments of CTIA-Wireless Association WC Docket No. 10-90, *et al*., filed August 24, 2011 at 3-7; Comments of Vonage Holdings Corp, WC Docket No. 10-90, *et* al., filed August 24, 2011at 2, 5-6; Comments of the Coalition for Rational Universal Service and Intercarrier Reform on the Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, WC Docket No., 10-90, *et al*., filed August 24, 2011 at 10. Of course, it is not surprising that CTIA is supporting the ABC Plan since certain of the ABC Plan Filing Companies' wireless affiliates are the among the largest members of the CTIA. *See http://www.ctia.org/membership/ctia_members/.*

[108] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374-75, 106 S.Ct. 1890, 1901-02 (1986).

To that end, the record reveals that the construction of other provisions of the Act cannot be reconciled with, for example, the explicit retention of state commission authority over intrastate exchange access under Section 251(d)(3) of the Act, or the general prohibition of no preemption of state law under Section 601 of the Act (152 nt.) unless "expressly" provided for in the Act. Moreover, like the Nebraska Companies, the Pennsylvania Commission convincingly demonstrates that Section 251(g) cannot possibly form a basis for "implied" authority under the Act for the Commission to assert Section 201 authority over all traffic.[109]

Louisiana PSC v. FCC precludes a federal agency from unilaterally preempting a state in pursuit of a federal policy absent clear statutory authority. Because Section 251(g) is limited to interstate practices and has nothing to do with establishing Commission authority to preempt intrastate rules or law, the Commission has no such authority.

In light of both the plain words of Section 251(g) and *Louisiana PSC v. FCC*, the most reasonable interpretation of Section 251(g) is that it affects state interconnection and exchange access requirements *only* if such requirements were affected by a "court order" or "consent decree" in the period *before* the passage of the 1996 revisions to the Act. As the Pennsylvania Commission argued, "[t]he section is no grant of 'implied authority' to regulate intrastate communications by the FCC after bringing that subject matter within the FCC's purview under Section 201. This is especially true for rates and matters of intrastate concern."[110]

The Nebraska Companies agree with the Pennsylvania Commission. Any alternative construction would ignore the fact that the clause "or regulation, order or policy of the Commission" contained in Section 251(g) establishes that it is only the Commission's regulatory

[109] *See*, Pa PUC Legal Memorandum at 29-30.

[110] *See, id*. at 30.

actions that can be "explicitly superseded by regulations prescribed by the Commission."[111] No gloss on the statutory phrase "or regulation, order or policy of the Commission" can be sustained that would expand the Commission's authority under the Act in this area. Thus, there is no basis to conclude as the ABC Plan proponents would contend that Section 251(g) grants the Commission the ability to explicitly supersede state commission authority over intrastate access and reciprocal compensation because the Commission had no authority over intrastate access and reciprocal compensation rates at the time that Section 251(g) was enacted (and the same is true now).

Likewise, it is difficult to see how even the ABC Plan Filing Companies can rationalize their previous positions on the law pronounced in the mid-2000s with the positions articulated in Attachment 5 to the ABC Plan. NARUC and the Pennsylvania Commission amply demonstrate the inconsistency of the ABC Plan Filing Companies current broad reading of the *ISP Remand Order* and *Core Communications* court decision versus their previous (and proper) narrow reading of these same rulings.[112] The irreconcilable conflicts between the previous and current positions of certain of the ABC Plan Filing Companies are not the only discrepancies presented in the record. As the Nebraska Companies demonstrated, the ABC Plan is internally irreconcilable. The ABC Plan relies on the use of "call detail" to separate traffic into a "reciprocal compensation" bucket and an "access" bucket claiming (albeit wrongly) that the traffic being addressed is allegedly inseverable (and thus wrongly concluding that call detail is not reliable).[113]

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[111] 47 U.S.C. § 251(g).

[112] *See*, NARUC Comments at 12-14; Pa PUC Legal Memorandum at 8-10.

[113] *See*, Nebraska Companies Comments at 31.

NARUC may be correct that an order issued by the Commission in this proceeding may end up in court.[114] If this is true, the Nebraska Companies generally agree with NARUC's contention that the preemption of state authority will make such a Commission order more suspect on appeal.[115] Accordingly, the Nebraska Companies respectfully urge rejection of the proposed preemption of state authority contained in the ABC Plan, including, but not limited to, the areas of intrastate access rates.

2. In Lieu of Preemption, Advancement of the Federal-State Partnership on Universal Service and ICC Reform should be Pursued.

Rather than the preemption in the ABC Plan, the Nebraska Companies agree with the Nebraska Commission's comments that creating inducements for states to reduce ICC rates is preferable,[116] and it is also more equitable for early adopter states. The early adopter states have lower intrastate access charge rates and higher local rates than states that have not taken actions to rebalance rates. If the states that have taken no action are provided RM support, then customers in early adopter states must pay relatively more because they not only pay higher local rates and state universal service fund surcharges for intrastate access charge reductions, but these customers will also pay a higher federal surcharge for other states' intercarrier compensation reductions. Net payer states are also penalized because a federally-funded RM causes net payer states to pay more of other states' costs.

The Nebraska Companies agree with the position of the Nebraska Commission that a matching fund with a per-line match is the most appropriate way to encourage state action.[117] Specifically, the Nebraska Companies propose that the Commission create a matching fund

[114] *See,* NARUC Comments at 5.

[115] *See, id*. at 6.

[116] *See*, Nebraska Commission Comments at 17-18.

[117] *See, id.* at 18.

program similar to the matching program used for the Lifeline program, whereby additional federal lifeline funding is an amount equal to one-half of any state-mandated Lifeline support up to a maximum amount.[118] As a result, this matching proposal would encourage the creation of state universal service funds and, in doing so, not harm early adopter states.

Moreover, a per-line match equalizes the contribution burden between large and small states because all customers would pay the same, regardless of the size of the state. The Commission could condition matching funds on state compliance with access reductions and local rates rebalancing to the national benchmark. At the end of a transition period, federal support could be reduced if a state failed to comply with the new requirements. If the Commission were to impose a requirement for state matching, the Nebraska Companies also respectfully suggest the importance of ensuring a sufficient intrastate universal service fund contribution base.[119] The Commission should, for example, allow an intrastate safe harbor amount similar to the actions already undertaken by the Commission.[120] To the extent required, the Commission could also establish similar safe harbors for other services.

B. The Record Reflects Broad Agreement that the ABC Plan's Vague Articulation of TDM-IP and IP-IP Interconnection and the Reliance on "Commercial Agreements" for IP-IP Interconnection are Improper and will Thwart Broadband Deployment.

While the Nebraska Companies may disagree with certain parties in this proceeding with regard to the ultimate action on ICC and universal service policies that should be taken by the

[118] 47 C.F.R. § 54.403(a)(3). Following is a hypothetical example of such matching for federal USF purposes based on a state with its own state universal service fund: A company receives $7 per line in incremental support. A state fund supplies $2 per line + 35% of the cost above $2 per line up to a maximum of $10 per line. In this example state funding equals $3.75 per line and federal funding equals $3.25 per line.

[119] *Accord* Nebraska Companies Comments at 80.

[120] *See*, Nebraska Companies Comments at 26-27, fn. 73 and 74.

Commission, there appears to be strong agreement across industry segments that the ABC Plan's proposals regarding Internet Protocol ("IP") interconnection (both IP-TDM and IP-IP) are wholly improper.[121] For example, commenting parties echo the Nebraska Companies' concerns regarding the ABC Plan's vague language on IP-IP interconnection being subject to "commercial agreements."[122] The Commission needs to act to establish the legally proper framework for IP-IP interconnection. As the Nebraska Companies stated in their comments, if the interconnection compensation and technical requirements and obligations on IP-IP and IP-TDM are not developed fully in Commission-prescribed, nationally-applicable rules,[123] whatever reforms are ordered by the Commission will be subject to manipulation and control by the largest carriers.[124] A review of the record on this aspect of the ABC Plan confirms the Nebraska Companies' concern. In fact, the record demonstrates an alarming array of interconnection actions already taken by the largest carriers with market power that may only increase if the Commission were to approve the ABC Plan's vague interconnection language.

For instance, the National Telecommunications Cable Association ("NCTA") states that many larger incumbent LECs or their affiliates have refused to pay tariffed access charges under the guise that the traffic is IP, even if the interconnecting party converts its IP traffic to TDM format. NCTA also states that Verizon refuses to pay access charges on traffic from some

[121] *See*, Comments of COMPTEL, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 30.

[122] *See*, ABC Plan, Attachment 1, n.10.

[123] In the interim, the Nebraska Companies recognize that state commissions may need to "fill-in-the-blanks" until such national standards are established in the Commission rules. *See,* Nebraska Comments at 59-60, fn.171.

[124] Of particular concern to rural companies are the incentives created for larger carriers under the vague ABC Plan language to avoid intercarrier compensation obligations for traffic utilizing PSTN resources by claiming interconnection is all-IP and thus subject to "commercial agreements," not lawful interconnection under Sections 251/252 of the Act. *See,* Nebraska Companies Comments at 55-62.

providers, including VoIP traffic that either originates or terminates in TDM protocol.[125] This conduct is precisely that which the Nebraska Companies fear will more broadly occur under the ABC Plan as more carriers attempt to avoid payment of lawful access or reciprocal compensation charges, particularly transport.

Other parties expressed wide-ranging concerns as to the harm that will arise based on the lack of clarity on IP-IP interconnection. Nonetheless, the concerns all have one consistent theme – based on their market power, the largest carriers (namely AT&T and Verizon, including their ILEC, wireless and IXC affiliates) – would be the sole beneficiaries of the vagaries of the ABC Plan's interconnection discussion. Thus, cable operators urge action so that, among other issues, traffic originated or terminated on a VoIP network "are fully included in the intercarrier compensation regime" and "precise compensation rights and obligations that apply to such carriers" are clarified.[126] Competitive carriers urge adoption of "strong interconnection policies" and confirmation that Sections 251 and 252 interconnection rights and obligations exist for IP interconnection as well as TDM interconnection.[127] T-Mobile properly recognizes the need for an IP interconnection regime, noting lack of an IP interconnection regime a "surprising omission" in the Further Notice.[128]

Additionally, other rural carriers recognize the harm that would arise from reliance on "commercial agreements." The Texas Statewide Telephone Cooperative, Inc. ("TSTCI") argues:

> It is clear from the ABC Plan and recent experience that the major carriers do not view IP-IP interconnection with the rural LECs as jointly provided access service

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[125] *See,* Comments of National Cable & Telecommunications Association, WC Docket No. 10-90 *et al.*, filed August 24, 2011 ("NCTA Comments") at 17.

[126] *See, id*. at 18.

[127] *See, e.g.*, Comments of XO Communications, LLC at 3-4, 12.

[128] *See,* Comments of T-Mobile USA, Inc., WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 9.

> (either switched or special) since they are currently refusing to provide Ethernet Transport Service on a jointly provided, meet point billing basis to end users in the rural LEC service area.

TSTCI properly warns that use of commercial agreements will “further erode the provision of services to the rural areas” and that “small, rural companies have little chance of defending their interests” in negotiations with the large carriers.[129] The Rural Broadband Alliance (“RBA”) was similarly troubled by IP interconnection being reduced to “a footnote” in the ABC Plan, and submitted that “the terms and conditions governing IP interconnection to a high-cost universal service network should be addressed within the framework of Notice of Inquiry and potential subsequent rulemaking proceedings.”[130] The Nebraska Companies concur and point out that the single footnote on interconnection in the ABC Plan stands in stark contrast to the exhaustive efforts of parties in the far more comprehensive (yet not acted upon) Missoula Plan, which contained more than 50 pages of interconnection recommendations.[131]

Accordingly, the Commission should reject the demands of ABC Plan sponsors and the RLEC Plan sponsors (whose members ultimately stand to be disadvantaged by the lack of interconnection certainty in the ABC Plan) that the Industry Plans’ vague “framework” must be adopted the Commission without change.[132] The treatment of IP-TDM and IP-IP interconnection is only one of many aspects of the ABC Plan that demonstrates both the need for further study to ensure that the public interest is met and that adoption of the so-called ABC Plan “framework” on an “as-filed” basis is wholly inappropriate. The Nebraska Companies respectfully submit that

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[129] *See,* TSTCI Comments at 9.

[130] *See,* RBA Comments at 18-19.

[131] *See,* Missoula Plan for Intercarrier Compensation Reform, filed July 24, 2006 at 4-55.

[132] The Rural Associations warn against “material changes to individual components of this framework would likely cause parties to withdraw their support for other components.” *See,* Rural Association Comments at 8.

the Commission must set the compensation and interconnection requirements for IP-IP and IP-TDM interconnection, not AT&T and Verizon.

C. The Record Supports the Conclusion that the ABC Plan's Treatment of Satellite Communications and Providers should be Rejected in its Entirety.

The Nebraska Companies respectfully refer the Commission to their comments filed herein relating to the legal and factual problems regarding the ABC Plan's proposal to utilize satellite service to provide broadband to the highest cost areas of this country.[133] For the reasons set forth in such comments and as set forth *infra*, the Nebraska Companies submit that the ABC Plan's proposed use of satellite service to serve high-cost areas of the country should be rejected.

1. The ABC Plan Violates Section 254 by Relegating High Cost Customers to Substandard (and Possibly No) Broadband and Voice Services.

The ABC Plan proponents acknowledge that the ABC Plan, like the National Broadband Plan, "proposes to rely on satellite broadband service for the most expensive high-cost service locations."[134] However, based upon the comments of the ABC Plan Filing Companies, the only "assurance" that satellite service will meet the comparability requirements of Section 254 is that "ViaSat and Hughes have announced plans to significantly expand the capacity of satellite broadband services in the near term and to improve those services' speed and other performance characteristics."[135]

Strikingly, this vote of confidence for future improvement of satellite broadband services is not shared by the Rural Associations even though they have generally endorsed the ABC Plan. In the comments of the Rural Associations in support of the "Consensus Plans," the Rural

[133] *See*, Nebraska Companies Comments at v and 47-53.

[134] *See*, ABC Plan Filing Companies Comments at 15.

[135] *Id*.

Associations state "it is highly questionable whether satellite services are capable of delivering affordable voice and broadband services of a quality comparable to either fixed terrestrial or mobile wireless services."[136] In this regard, the Nebraska Companies agree with and have demonstrated the accuracy of the Rural Associations' conclusion.[137]

The inadequacy of satellite service to satisfy the "reasonably comparable" requirements of Section 254(b)(3) is confirmed by a number of commenters. NASUCA states:

> Under the ABC Plan, the goal of voice and broadband access in many unserved areas would be virtually abandoned and these households and businesses would be forced to rely on satellite 'broadband' for both voice and broadband that is so woefully inadequate that even FCC would be hard pressed to argue it meets the intended objective.[138]

The Pennsylvania Commission, referencing the State Members Plan, points out that "complaints involving satellite service have included latency (transmission delays through geosynchronous orbit satellites) for voice communications, as well as weather sensitivity that affects both voice and data satellite communications."[139] Other commenters affirm the lack of comparability of broadband service capabilities of satellite as compared to terrestrial and mobile broadband.[140]

Accordingly, the record amply supports rejection of the "satellite" portions of the ABC Plan on this basis alone.

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[136] *See*, Rural Association Comments at 13, fn. 22.

[137] *See*, Nebraska Companies Comments at v and 47-53.

[138] *See*, NASUCA Comments at 5 (emphasis in original; footnote omitted).

[139] Pennsylvania Commission Comments at 9 and fn. 17.

[140] *See, e.g.*, TSTCI Comments at 6-7; Comments of Rural Independent Competitive Alliance, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 19; RBA Comments at 15.

2. The Satellite Proposals in the ABC Plan are not Viable Unless Satellite Providers Meet Support Eligibility Rules in Section 214(e) of the Act which is Unlikely to Occur.

As the Nebraska Companies observed in their comments, the ABC Plan's treatment of satellite service violates the support eligibility rules in the 1996 revisions to the Act.[141] The satellite service providers themselves acknowledge that receipt of USF support is proper only "as long as they meet the statutory criteria set forth in Section 214(e)(1) of the Act."[142] However, there has been no demonstration that any satellite provider is now or will in the future be able to meet eligible telecommunications carrier status requirements pursuant to 47 U.S.C. § 214(e). As NASUCA succinctly states:

> One thing should be clear, however: Given satellite's limitations for voice service, satellite should be limited to broadband in extremely high-cost areas, and should not be allowed to take the place of current landline voice service (as suggested by the ABC Plan).[143]

These same concerns regarding the limitations of satellite service regarding voice are reflected with regard to the availability of 911 services.[144] Accordingly, these reasons also support the rejection the ABC Plan's "satellite" provisions.

3. The Record Lacks Any Evidence that Establishes the "Alternative Technology Cost Threshold" or that High-Cost USF Support is Needed by Satellite Providers to Serve Remote, High-Cost Areas.

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[141] *See,* Nebraska Companies Comments at 49-50.

[142] *See,* Satellite Broadband Providers' Comments, WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 10, fn.21 citing *Federal-State Joint Board on Universal Service, Report and Order,* CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) at para.145. In fact, the Satellite Broadband Providers generally oppose the USF aspects of the ABC Plan, the RLEC Plan and the State Members Plan. *See, id.* at 2.

[143] *See,* NASUCA Comments at 94.

[144] *See,* Nebraska Commission Comments at 17 ("If satellite is seen as a substitute for traditional voice communications, the Commission must ensure that the service is reliable and consumers have access to 911 emergency services."); and Joint Comments of Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc., WC Docket No. 10-90 *et al.*, filed August 24, 2011 at 3.

Even assuming that the issues addressed in sub-sections III.C.1 and C.2 above would be properly resolved in a manner consistent with the Act's requirements, the facts and rational public policy, there still remains no basis in the record to establish the "alternative technology cost threshold" suggested by the ABC Plan or the level of high-cost USF support, if any, that would be warranted in connection with the provision of satellite service to remote, high-cost areas. In its comments, the Pennsylvania Commission observes that "it appears that the $256 'alternative technology cost threshold' was established simply so that the $2.2 billion of annual CAF support budget [established in the ABC Plan] could be met for the price cap carriers."[145] In the Rural Association Comments the observation is offered that "it would seem the cost of providing satellite service in even the most remote rural locations may not differ all that much from the cost of providing the same service in Manhattan."[146]

Of course, the fundamental problem with the ABC Plan and the comment process established by the *Further Inquiry* that the foregoing observations underscore is the failure to make the computer model and model outputs that underpin the ABC Plan available for public evaluation. This issue has been fully addressed in the Nebraska Companies Comments which request release of the ABC Plan model, designated as the "CQBAT Model", for public evaluation and a minimum of 90 days to substantively comment on such model and its inputs.[147]

To the extent that the Commission determines that any serious consideration should be accorded to satellite technology to serve the highest cost areas of the country, a full and complete record must be developed to demonstrate the capability of satellite providers to provide universal service in sparsely populated rural areas. As is pointed out by the Rural Broadband Alliance,

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[145] *See*, Pa PUC Comments at 9.

[146] *See*, Rural Association Comments at 13, fn. 22.

[147] *See*, Nebraska Companies Comments at v and 2-13.

"there is no basis to provide any additional USF to a satellite provider in the absence of a factual record demonstrating the need for the support."[148] As even the Rural Association Comments recommend:

> If the Commission wants to investigate further to what extent USF resources should be put toward support of satellite services, it can and should do so in a Further Notice of Proposed Rulemaking where it can more fully consider the true and complete nature of the need and capabilities of such offerings and consumer demand for them.[149]

IV. CONCLUSION

For all of the reasons provided in these reply comments and in the Nebraska Companies comments filed herein on August 24, 2011, the Nebraska Companies respectfully submit that the Commission should not adopt the ABC Plan or the RLEC Plan, but rather, should propose and release for comment a universal service proposal that incorporates the positions set forth in the foregoing reply comments and the previous filings made by the Nebraska Companies in this proceeding. The Nebraska Companies understand the need to modernize the federal USF and ICC system. These needs, however, are not met by the Industry Plans currently before the Commission for consideration.

Dated: September 6, 2011.

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[148] *See*, RBA Comments, Attachment at 19.

[149] *See*, Rural Association Comments at 13, fn. 22.

Respectfully submitted,

Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom, Inc., and Three River Telco

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